Housing Discrimination Complaint

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0011

Please type or print this form

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Read this entire form and all the instructions carefully before completing. All questions should be answered. However, if you do not know the answer or if a question is not applicable, leave the question unanswered and fill out as much of the form as you can. Your complaint should be signed and dated. Where more than one individual or organization is filing the same complaint, and all information is the same, each additional individual or organization should complete boxes 1 and 7 of a separate complaint form and attach it to the original form. Complaints may be presented in person or mailed to the HUD State Office covering the State where the complaint arose (see list on back of form), or any local HUD Office, or to the Office of Fair Housing and Equal Opportunity, U.S. Department of HUD, Washington, D.C. 20410.

This section is for HUD use only.

Number / Filing Date	(Check the applicable box)	Jurisdiction	Signature of HUD personnel who established Jurisdiction
Number: Filing Date:	☐ Referral & Agency (specify) ☐ Systemic ☐ Military Referral	☐ Yes ☐ No ☐ Additional Info	

1. Name of Aggrieved Person or Organization (last name, first name, middle initial) (Mr.,Mrs.,Miss,Ms.): **The National Community Reinvestment Coalition**
Home Phone:
Business Phone: **202-628-8866**
Street Address (city, county, State & zip code): **727 15th Street NW, Suite 900, Washington, D.C. 20005**

2. Against Whom is this complaint being filed? (last name, first name, middle initial): **Standard & Poor's Ratings Services**
Phone Number:
Street Address (city, county, State & zip code): **55 Water Street, New York, N.Y. 10041-0003**

Check the applicable box or boxes which describe(s) the party named above:
☐ Builder ☐ Owner ☐ Broker ☐ Salesperson ☐ Supt. or Manager ☐ Bank or Other Lender ☑ Other

If you named an individual above who appeared to be acting for a company in this case, check this box ☐ and write the name and address of the company in this space:
Name:
Address:

Name and identify others (if any) you believe violated the law in this case:

3. What did the person you are complaining against do? Check all that apply and give the most recent date these act(s) occurred in block No. 6a below.
☐ Refuse to rent, sell, or deal with you
☐ Falsely deny housing was available
☐ Engage in blockbusting
☐ Discriminate in broker's services
☐ Discriminate in the conditions or terms of sale, rental occupancy, or in services or facilities
☐ Advertise in a discriminatory way
☐ Discriminate in financing
☐ Intimidated, interfered, or coerced you to keep you from the full benefit of the Federal Fair Housing Law
☑ Other (explain) **Facilitated discriminatory subprime loans that disproportionately adversely impacted African Americans and Latino**

4. Do you believe that you were discriminated against because of your race, color, religion, sex, handicap, the presence of children under 18, or a pregnant female in the family or your national origin? Check all that apply.
☑ Race or Color: ☑ Black ☐ White ☐ Other
☐ Religion (specify)
☐ Sex: ☐ Male ☐ Female
☐ Handicap: ☐ Physical ☐ Mental
☐ Familial Status: ☐ Presence of children under 18 in the family ☐ Pregnant female
☑ National Origin: ☑ Hispanic ☐ Asian or Pacific Islander ☐ American Indian or Alaskan Native ☐ Other (specify)

5. What kind of house or property was involved?
☐ Single-family house
☐ A house or building for 2, 3, or 4 families
☐ A building for 5 families or more
☐ Other, including vacant land held for residential use (explain)

Did the owner live there? ☐ Yes ☐ No ☐ Unknown

Is the house or property ☐ Being sold? ☐ Being rented?

What is the address of the house or property? (street, city, county, State & zip code)

6. Summarize in your own words what happened. Use this space for a brief and concise statement of the facts. Additional details may be submitted on an attachment.
Note: HUD will furnish a copy of the complaint to the person or organization against whom the complaint is made.

6a. When did the act(s) checked in Item 3 occur? (Include the most recent date if several dates are involved)

7. I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.
Signature & Date: John Taylor 1-21-07

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER:

1. **Complainant**

   David Berenbaum
   Executive Vice President
   National Community Reinvestment Coalition
   727 15th Street, NW
   Suite 900
   Washington, D.C. 20005

2. **Other Aggrieved Persons**

   None.

3. **The following is alleged to have occurred or is about to occur**:

   The facilitation of discriminatory subprime lending.

4. **The alleged violation occurred because of**:

   Race, color, and/or national origin

5. **Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

   The discrimination occurs nationwide.

6. **Respondent**

   Standard & Poor's Rating Services
   55 Water Street
   New York, N.Y. 10041-0003.

7. **The following is a brief and concise statement of the facts regarding the alleged violation:**

   Respondent facilitated, encouraged, and profited from securitized subprime loans that caused a disproportionate adverse impact on Africans Americans and Latinos, and persons living in African-American and Latino communities, constituting a pattern and practice of discrimination and a continuing violation of the FHAA. Complainant NCRC is a national non-profit organization whose mission and purpose is to increase fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race. Standard & Poor's discriminatory practices have frustrated NCRC's mission of increasing the flow of private capital into underserved communities and has caused NCRC to expend its scarce resources on educational programs, investigations, and litigation to identify and combat such practices.

8. The most recent date on which the alleged discrimination occurred:

The alleged discrimination is ongoing.

9. Types of Federal Funds identified:

None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804 and 805 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

1-21-09

For National Community Reinvestment Coalition **(Date)**

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

IN THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIONAL COMMUNITY REINVESTMENT COALITION	:
Complainant,	:
v.	:
STANDARD & POOR's Rating Services	:
Respondent.	:

STATEMENT IN SUPPORT OF COMPLAINT
OF THE NATIONAL COMMUNITY REINVESTMENT COALITION

I. NATURE OF THE COMPLAINT

1. This complaint brought by the National Community Reinvestment Coalition (the "NCRC" or "Complainant") arises out of a pattern or practice of discriminatory lending by race and/or color and/or national origin that was facilitated, encouraged, and profited from by respondent. NCRC seeks a declaratory judgment, permanent injunctive relief, and damages for respondent Standard & Poor's Rating Services ("Standard & Poor's") or ("Respondent's") unlawful behavior. This action is brought under the *Fair Housing Act of 1968*, as amended, 42 U.S.C. § 3601 et seq. (the "FHAA").

2. Complainant NCRC is a national non-profit organization whose mission and purpose are to increase fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race. NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. National Neighbors, a program of NCRC, is dedicated to creating public- and private-sector partnerships and programs that promote racial and cultural equality, opportunity, and diversity. Standard & Poor's discriminatory practices have frustrated NCRC's mission of increasing the flow of private capital to underserved communities, and

has caused NCRC to expend its scarce resources on educational programs, investigations, and litigation to identify and combat such practices.

3. Respondent Standard & Poor's is a Nationally Recognized Statistical Rating Organization (NRSRO) that assigns credit ratings to securities. Market participants rely on these ratings to assess value and risk. Market participants purchased subprime-related securities on the strength of assessments by respondent. Market participants allocated capital and extended credit based on these ratings.

4. Respondent facilitated, encouraged, and profited from securitized subprime loans that were designed to fail because of unfair payment terms and borrower income levels that could not sustain homeownership based on those payment terms. Respondent's facilitation of these transactions led to high default and foreclosure rates. Respondent's unlawful actions caused a disproportionate adverse impact on Africans Americans and Latinos and persons living in African-American and Latino communities, which constituted a pattern and practice of discrimination and a continued violation of the FHAA. These predatory real estate-related transactions, facilitated by respondent, targeted African Americans and Latinos and persons living in predominately African-American and Latino neighborhoods. Because the disparate impact of these loans on minorities and those who live in minority communities was clear, respondent knew—or should have known—that its unwarranted ratings, which fueled and sustained subprime lending, had a similar disparate impact.

5. Respondent assigned inflated, inaccurate, and inappropriate ratings to securities backed by subprime mortgages. By this conduct, respondent facilitated, encouraged, and profited from discriminatory, unfair, and deceptive lending practices and irresponsible secondary market purchases of subprime-backed securities. This led to high default and foreclosure rates and a resulting restriction on access to credit, which harmed communities served by NCRC.

6. Respondent reaped millions of dollars in fees for assigning inflated ratings to securities backed by subprime mortgages. During the housing market boom, respondent assigned unwarranted ratings to subprime-related securities, given the information that was known at the time or available at the time of the rating and should have been considered under its procedures. Moreover, as the housing market began to deteriorate, causing delinquencies in subprime mortgages, respondent maintained its inflated ratings, rather than downgrading them to reflect the true value and risk of these securities. Respondent also made public misrepresentations about the soundness and reliability of its ratings.

7. Respondent assigned inaccurate, inappropriate, and inflated values and ratings to securitized subprime loans and failed to correct these ratings in a timely and appropriate manner by the following means:

   - Respondent materially diverted from its standards and/or committed a fraud on the market by misrepresenting that it had sound and accurate procedures in place to accurately rate residential mortgage-backed securities.

   - Respondent failed to consider mortgage fraud, decreasing underwriting standards, and high-risk loan products, materially diverting from its standards, and/or committed a fraud on the market.

   - Respondent was unduly influenced by issuers and/or underwriters to give unwarranted ratings to residential mortgage-backed securities. Respondent failed to conduct due diligence and willfully assigned the highest ratings to such impaired instruments since it received substantial fees from the issuer.

8. There is no legitimate business justification for respondent's discriminatory conduct.

9. Respondent's unlawful actions cause, and continue to cause, a direct disproportionate adverse injury to African Americans and Latinos and persons living in African-American and Latino communities across the nation.

II. PARTIES

10. Complainant NCRC is a national non-profit corporation organized under the laws of the District of Columbia, with its principal place of business located at 727 15th Street NW, Suite 900, Washington, D.C. 20005. NCRC was formed in 1990 by national, regional, and local organizations to develop and harness the collective energies of community reinvestment organizations from across the country. NCRC member organizations represent and protect traditionally underserved and vulnerable populations. Member groups include community development corporations, civil rights groups, community reinvestment advocates, local and state government agencies, and faith-based organizations. NCRC primarily works to increase fair and equal access to credit, capital, and banking services and products to individuals, regardless of race.

11. Respondent Standard & Poor's Rating Services is a NRSRO with its principal offices located at 55 Water Street, New York, N.Y. 10041-0003. Standard & Poor's provides credit ratings, and performs financial research and analysis for commercial and government entities.

III.FACTUAL BACKGROUND

12. Respondent issued false and inflated ratings for securities backed by loans that it knew or should have known were unfair, deceptive, and predatory, allowing such loans to be originated, packaged, and purchased, resulting in high levels of default and foreclosure. Respondent also failed to timely correct its inaccurate ratings, and changed its ratings only after the foreclosure crisis had already significantly damaged individuals and communities across the country. By assigning inflated ratings to securities backed by subprime mortgages, respondent facilitated, encouraged, and profited from unfair and deceptive lending practices. Because of the clear disparate impact of these unfair, deceptive, and predatory lending practices on African Americans and Latinos and persons living in African-American and Latino communities, respondent has conducted itself in violation of the FHAA.

The *Fair Housing Act*

13. The FHAA prohibits discrimination in the sale, rental, and financing of dwellings and in other housing-related transactions based on race, color, national origin, religion, sex, familial status, and disability. Based on the inflated ratings provided by respondent, market participants allocated capital and extended credit for mortgage loans on unfair and deceptive terms disproportionately to African Americans and Latinos and persons living in African-American and Latino neighborhoods. In addition, because of the economic losses caused by respondent's inflated ratings, there is now a consequential restriction on access to credit, which is especially pronounced in minority communities.

14. Respondent has made housing unavailable because of race and/or color and/or national origin in violation of 42 U.S.C. § 3604(a) because it facilitated, encouraged, and profited from loans that were unfair, deceptive, and predatory, often resulting in default and foreclosure. In determining whether housing has been made unavailable under the FHAA, "The critical question is not whether one type of conduct exactly parallels another type already explicitly proscribed by the FHAA. Rather, the issue is whether the defendant's activity is 'integrally involved in the sale or financing of real estate.'" *U.S. v. Mass. Indus. Finance Agency*, 910 F. Supp. 21 at 27 *quoting Devereaux Foundation, Inc. v. O'Donnell*,

No. 89-6134, 1990 WL 2796, at 6 (E.D. Pa. 1990). Courts have extended liability for making housing unavailable to not only lenders but also to home insurance, appraisal companies, and zoning authorities that facilitated discriminatory conduct. *Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1360 (6th Cir. 1995) (insurance); *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986) (appraisals); *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987) (zoning). Because the respondent facilitated discrimination through its false ratings, it is similarly in violation of the FHAA.

15. Further, even if respondent's conduct does not literally make housing "unavailable," it violated the FHAA by facilitating predatory subprime loans that were disproportionately given to African Americans and Latinos and persons living in African-American and Latino communities, adversely affecting their ability to use and enjoy housing. Predatory subprime loans make it impossible for homeowners to maintain or improve their property, or benefit from the financial advantages of home equity. *See Wai v. Allstate Ins. Co.,* 75 F. Supp. 2d 5- 7 (O.D.C. 1999); *Lindsey v. Allstate Ins. Co.,* 34 F. Supp. 2d 636, 642 (W.D. Tenn. 1999) (rejecting defendant's argument that redlining claim can only be pled where plaintiff is denied initial opportunity to purchase a house because "[m]aintaining possession of a home is as important to a homeowner as obtaining possession of a home.").

16. Respondent has also discriminated by race and/or color and/or national origin in violation of 42 U.S.C. § 3605 because its conduct amounts to providing financial assistance for a transaction secured by residential real estate. The inflated ratings provided by respondent allowed discriminatory securitized subprime loans to be originated, brokered, and serviced. African Americans and Latinos and persons living in African-American and Latino communities received a disproportionate share of these predatory subprime loans. As a result, respondent's actions had a disparate impact on protected classes by facilitating "reverse redlining."

17. In contrast to "redlining," which is the practice of denying *prime* credit to specific geographic areas because of the racial or ethnic composition of the area, "reverse redlining" involves the targeting of an area for the marketing of deceptive, predatory, or otherwise deleterious lending practices because of the race or ethnicity of the area's residents. This practice by lenders and those facilitating lending has repeatedly been held to violate the FHAA. *See, e.g., Barkley v. Olympia Mortgage Co.*, 2007 WL 2437810 (E.D.N.Y. Aug. 22, 2007); *Hargraves v. Capital City Mortgage Corp.*, 140 F. Supp. 2d 7 (D.D.C. 2000). Respondent facilitated reverse redlining because predatory subprime loans targeted and were disproportionately made to predominantly African-American and Latino communities.

Respondent Assigned Inflated Ratings to Securitized Subprime Loans

18. Respondent willfully assigned inflated investment-grade ratings to residential mortgage-backed securities, allowing subprime loans to be originated, packaged, and brokered, and the risk readily transferred to others. Traditionally, banks lent money to homeowners for their mortgage, and retained the risk of default because those loans were held in their portfolios. However, under securitization, a structured finance process, home mortgages are bundled into packages of securities and then sold to investors. As home prices steadily rose, packaging and selling mortgages as securities greatly expanded, and market participants increasingly used securitization as a tool to garner profits not as a method of managing risk[1]. Securitization led to the explosion of the subprime mortgage market because it greatly increased available capital, while diversifying and reducing risk.[2] Consequently, discriminatory subprime loans were increasingly packaged into securities, including loans underwritten with limited documentation and loans secured by second liens. Respondent assigned inflated ratings to these subprime securities, facilitating predatory subprime lending practices that adversely affected African Americans and Latinos and persons living in African-American and Latino communities.

19. A subprime loan has an interest rate higher than prevailing and competitive rates to compensate for the added risk of lending to a borrower with impaired credit. NCRC defines a predatory loan as any loan designed to exploit borrowers based on financial vulnerability, minority status, or income level. Predatory loans are a subset of subprime and non-traditional prime loans. A predatory loan has one or more of the following features: 1) it charges more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections; 2) it contains abusive terms and conditions that trap borrowers and lead to increased indebtedness; 3) it does not take into account the borrower's ability to repay the loan; and 4) it violates fair lending laws by targeting women, minorities, and communities of color.

20. Respondent played a central role in subprime-related securitization because investors purchased securities, allocating capital and extending credit, based on its ratings. The high credit ratings on residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs") enabled subprime-related securities to be sold to investors and led to increased market acceptance of these products.[3] Many investors purchase subprime-related securities only if they carry investment-grade ratings. Investors heavily relied on the technical competence of respondent to accurately assess risk. Structured finance transactions were also very complex and innovative, and investors did not have

access to the underlying financial information that would allow them to clearly understand the quality of the securities. Moreover, respondent, along with the other top two rating agencies, promoted that they had an institutional reputation of being honest arbiters of risk, after being in the business for almost a century[4]. Respondent's ratings were thus an essential part of subprime-related securitization.

21. Subprime-related securitization was a new source of substantial revenue for respondent. Over two-thirds of all subprime mortgages are now securitized, compared with 54 percent in 2001.[5] According to the Securities Industry Financial Markets Association, securitization of home mortgages and consumer loans was the biggest U.S. export business of the 21st century; more than $27 trillion of these securities were sold since 2001, which almost amounts to twice the 2007 U.S. gross domestic product of $13.8 trillion.[6] As of June 30, 2006, mortgage-backed securities accounted for the largest segment of the U.S. bond market (23 percent of all outstanding bond market debt, compared with corporate bonds at 20 percent and Treasury debt at 16 percent).[7] Subprime-related securities generated tremendous revenue and were extremely important to the U.S. economy.

22. Respondent profited significantly by issuing inflated ratings to securitized subprime loans. Revenues for the top three NRSROs, which includes respondent, doubled during the housing boom from $3 billion in 2002 to over $6 billion in 2007.[8] At a Congressional hearing on the role of the rating agencies in the financial crisis, Frank L. Raiter, head of mortgage ratings at Standard & Poor's for ten years, characterized the respondent's failures to accurately assess the risk of mortgage-backed securities by saying: "Profits were running the show."[9] Mr. Raiter testified that Standard & Poor's deliberately used out-dated ratings models to measure performance.[10] Respondent profited greatly by assigning inflated ratings to these securities, enhancing the subprime mortgage market, and fostering predatory lending practices that disproportionately adversely affected African Americans and Latinos and persons living in African-American and Latino communities.

23. Respondent knew or should have known that predatory practices permeated the subprime securitization market. A 2005 study of loan performance data finds that 55 percent of the securitized subprime loans studied had pre-payment penalties of three years or longer and 14 percent had balloon payments– features that increase the likelihood of foreclosure and are prohibited under several state anti-predatory lending laws.[11] In addition, 49 percent of the securitized subprime loans examined were adjustable rate mortgages (ARMs).[12] Hybrid ARMS, which are generally regarded as financially unsustainable, made up 81 percent of the subprime sectors' securitized loans in the second quarter of 2006.[13] Moreover, mortgage brokers, who issue approximately 70 percent of subprime mortgages, are not required to offer loans in the borrowers' best interest.[14]

24. Subprime loans are also generally more likely than prime mortgages to go into foreclosure. One in five of the subprime loans originated in 2005-2006 alone are expected to result in foreclosure.[15] The risk of foreclosure is heightened when borrowers have subprime loans with predatory features. Subprime loans with predatory terms such as extended prepayment penalties and balloon payments are 20 to 50 percent more likely to result in foreclosure.[16] Inappropriate loan products, inadequate underwriting, bloated appraisals, abusive prepayment penalties, excessive broker fees, the steering of borrowers into high-cost products, and servicing abuses have been widely reported in the subprime mortgage market.[17] Loans with high loan-to-value ratios and loans underwritten with limited or no documentation of a borrower's income were also a major source of abuse in the subprime securitization market. As arbiters of risk, respondent knew and should have known that these products were not designed to sustain homeownership and substantially, but were more likely to result in foreclosure.

25. Respondent's conduct enabled predatory loans to increasingly flood the subprime market. Respondent disregarded its own procedures, failed to consider mortgage fraud, and decreased underwriting standards because it generated substantial revenue from assigning inflated ratings to these securities. Issuers and underwriters relied upon the respondent to issue ratings that would enable securities backed by subprime mortgages to be sold. Respondent was incentivized and/or unduly influenced to give high ratings because of the inherent conflict of interest in the issuers/underwriters pays business model. Respondent failed to conduct due diligence and willfully assigned the highest ratings to such impaired instruments because it received substantial fees from the issuer.

26. Respondent knew or should have known that the financials underlying subprime mortgages were unreliable. Rating agency analysis of mortgage-backed transactions includes, "an assessment of the likelihood that a lender might have violated predatory lending laws, and the extent to which violations by the lender would reduce the proceeds available to repay securitization investors."[18] Standard & Poor's acknowledged that poor underwriting may have accounted for underperformance of its residential mortgage-backed securities.[19] In its report on RMBS trends, respondent noted that "no verification" and "verbal verification" documentation-type loans represented 31.44 percent of the subprime transactions it rated in the second-quarter of 2007 and 35.73 percent of subprime transactions it rated in the first-quarter of 2007. Yet, respondent made little or no effort to ascertain or verify the financial status of the subprime assets backing the securities and used out-dated ratings models to give investment-grade ratings, thereby facilitating predatory lending that statistics have shown disproportionately adversely affected African Americans and Latinos and persons living in African-American and Latino

communities. Moreover, respondent materially diverted from its standards and/or committed a fraud on the market by misrepresenting that it had sound and accurate procedures in place to accurately rate residential mortgage-backed securities.

27. As subprime mortgage delinquencies and defaults skyrocketed, it became clear that the respondent assigned inflated and inaccurate ratings to securities backed by subprime mortgage loans. As of March 2008, Standard & Poor's downgraded 44.3 percent of the subprime tranches it rated between the first quarter of 2005 and the third quarter of 2007. This included 87.2 percent of securities backed by second lien mortgages.[20] These unprecedented downgrades demonstrated that respondent masked escalating losses in the subprime-securitization market.

28. The massive downgrading revealed that respondent had provided inflated ratings and various officials are investigating their central role in the foreclosure crisis. The Securities and Exchange Commission ("SEC") initiated examinations of the top NRSRO, including respondent, to review their role in the turmoil in the subprime mortgage-related securities market. On June 11, 2008, the SEC proposed new rules to bring to an end the practice of assigning inflated ratings. The proposed rules, among other things, would prohibit a rating agency from issuing a rating on a structured product unless information on the underlying assets was available, prohibit credit rating agencies from structuring the same products that they rate, and require the public disclosure of the information an agency used to determine a rating for a structured product, including information on underlying assets. In addition, the SEC's investigations revealed disturbing anecdotal evidence about the reckless issuance of inflated ratings by respondent. An analytical manager of a Standard & Poor's wrote to a senior analytical manager, "Let's hope we are all wealthy and retired by the time this house of cards falters," in reference to asset-backed and mortgage-backed securities. Moreover, the investigation revealed that respondent analysts knew that they were giving inflated ratings to subprime securities. In an exchange between Standard & Poor's analysts, both analysts expressed concern that they should not be rating a mortgage-backed security because the NRSRO model did not capture "half" of the deal's risk, but that "it could be structured by cows and we would rate it."[21]

29. Only after it downgraded its ratings and after the SEC initiated its investigation, did Standard & Poor's acknowledge that its ratings system was broken and required an overhaul. In Congressional testimony in April 2008, Vickie A. Tillman, executive vice president of Standard & Poor's Credit Rating Services, confirmed that Standard & Poor's recently implemented new oversight procedures, changed its analytical model, and started collecting some of the data necessary to review and rate subprime loan

pools.[22] At the time Standard & Poor's implemented these changes, communities across the country had already been injured and would continue to be injured by the company's failed rating system.

Respondent' Misconduct Disproportionately Adversely Affected African Americans and Latinos and Persons living in African-American and Latino Communities in Violation of the *Fair Housing Act*

30. Respondent facilitated, encouraged, and profited from discriminatory subprime loans that were disproportionately made to African Americans and Latinos. Studies consistently confirm that African Americans and Latinos received a higher proportion of subprime loans. According to a 2006 Federal Reserve study, 45 percent of home loans to Latino households and 55 percent of home loans to African Americans are subprime.[23] These utilization rates of subprime lending are three to four times that of non-Hispanic white households.[24] African-American borrowers will lose between $71 billion and $92 billion in wealth, while Latino borrowers will lose between $75 billion and $98 billion due to subprime loans.[25] Had subprime loans been distributed equitably, losses for whites would be 44.5 percent higher and losses for people of color would be about 24 percent lower.[26]

31. Respondent's conduct disproportionately affects African-American and Latino homeowners adversely because the discriminatory subprime loans respondent facilitated are more likely to go into default and foreclosure than prime loans. African-American and Latino borrowers are twice more likely to suffer subprime-related home foreclosures than white homeowners.[27] Foreclosures are projected to affect one in ten African-American borrowers.[28] In contrast, only about one in 25 white mortgage holders will be affected.[29] As these subprime loans go into default and foreclosure, persons living in African-American and Latino communities are, and will continue to be, disproportionately adversely affected by securitized subprime loans. Declining property values, vacant and abandoned properties, and losses to the tax base and local economies will result from the high rates of default and foreclosure of securitized subprime loans.

32. Numerous reports have shown that subprime lending is disproportionately concentrated in predominately minority neighborhoods, strongly indicating that subprime lenders targeted African-American and Latino communities. In NCRC's "Broken Credit System" study (2004), NCRC found that the race composition of a neighborhood has an effect on subprime lending. The study focuses on ten large metropolitan areas: Atlanta, Baltimore, Cleveland, Detroit, Houston, Los Angeles, Milwaukee, New York, St. Louis, and Washington, DC. In nine of the ten metropolitan areas surveyed, the level of subprime refinance lending increased as the number of African Americans in the neighborhood, relative

to whites, increased. The African-American composition of a neighborhood boosted lending in six out of ten metropolitan areas in the case of home purchase subprime lending.

33. In addition, research shows that African Americans and Latinos were steered toward refinance subprime products even where they may have qualified for a prime loan product. NCRC's report "Income is No Shield II" (2008) demonstrates that lending disparities exist for African Americans and Latinos, even when controlling for income. Middle- to upper-income ("MUI") African-American borrowers were twice as likely or more than MUI whites to receive subprime loans in 71.4 percent of the metropolitan areas studied. MUI Latinos were twice as likely or more than MUI whites to receive a subprime loan in 22.5 percent of the metro areas studied. NCRC's study "Homeownership and Wealth Building Impeded" (2006) finds that subprime loans made up 41.9 percent of all refinance loans to low- and moderate-income (LMI) African Americans and only 19.2 percent of refinance loans to LMI whites in 2004. Subprime loans made up 30.2 percent of all refinance loans for MUI African Americans in the areas studied.

34. NCRC's findings are consistent with other research about the disproportionate adverse effect of subprime lending on African Americans and Latinos. The U.S. Department of Housing and Urban Development (HUD) has found that after controlling for housing stock characteristics and the income level of the census tract, subprime lending increases as the minority level of the tract increases.[30] "Paying More for the American Dream," a study conducted by an alliance of policy, research, and advocacy organizations, analyzed the geographic operating patterns of 35 subprime lenders including New Century Mortgage, WMC Mortgage, and Fremont Investment & Loan. The study concluded that these subprime lenders targeted their products to minority communities. The study focused on lending to minority urban markets in New York, Los Angeles, Chicago, Boston, Cleveland, Charlotte, and Rochester, NY. In six of these seven areas studied, the subprime lenders' market share in minority neighborhoods was at least three times the share in white neighborhoods. More than 40 percent of the 136,483 loans made by subprime lenders in the areas surveyed were in neighborhoods where 80 percent or more of the residents were people of color, and less than ten percent of the subprime lender loans were made in areas where less than ten percent of the residents were people of color.

35. Therefore, Standard & Poor's facilitated, encouraged, and profited from securitized subprime loans that disproportionately adversely affected African Americans and Latinos and persons living in African-American and Latino communities. The above described actions of the respondent constitute a violation of the FHAA, which prohibits discrimination in the sale, rental, and financing of dwellings and in other

housing-related transactions based on race, color, national origin, religion, sex, familial status, and disability. By the actions described above, respondent has made housing unavailable based on race and/or color and/or national origin in violation of 42 U.S.C. § 3604(a) because it facilitated loans that could not sustain homeownership. By the actions described above, respondent also discriminated by race and/or color and/or national origin in violation of 42 U.S.C. § 3605. Respondent gave inflated ratings to subprime-linked securities, allowing unfair and deceptive loans to be made disproportionately to African-American and Latino communities.

IV. INJURY CAUSED BY RESPONDENT

36. Through numerous workshops, conferences, systematic testing, reports, education and outreach, and "best practice" compliance initiatives, the NCRC has provided education, training, and technical assistance to its members, community organizations, and advocates at the local, regional, and national levels to promote fair lending and access to capital in low-income and minority communities across the country. The unlawful discriminatory actions of Standard & Poor's has injured the NCRC by: (a) interfering with those efforts and programs of the NCRC intended to promote fair lending; (b) requiring the NCRC to commit scarce resources, including substantial staff time, to investigate complaints and review Standard & Poor's rating practices, engage in education and outreach campaigns, and develop educational materials to identify and counteract the unlawful actions of Standard & Poor's, thereby diverting those resources from other testing, education, counseling, and capacity-building services; and (c) frustrating the NCRC's mission and purpose of increasing fair and equal access to credit, capital, and banking services and products for all Americans, regardless of race. The discriminatory actions of the respondent have required, and will continue to require, the NCRC to spend additional resources to counteract the respondent's discriminatory conduct.

37. As a result of respondent's discriminatory conduct, individuals in the communities served by the NCRC have been: (a) given loans without regard to ability to pay; (b) subject to foreclosure actions; and (c) deprived of equal access to credit, capital, and banking services and products. As a result of the respondent's discriminatory conduct, communities served by the NCRC and its member organizations have been denied the flow of capital, restricted access to credit, and corresponding economic growth on an individual and community level. In response, the NCRC has made substantial efforts and expanded

considerable resources to investigate the existence and effects of Standard & Poor's discriminatory practices in an effort to ensure equal lending opportunities for potential borrowers.

38. NCRC has been, and continues to be, adversely affected by the acts, policies, and practices of the respondent and/or their respective agents.

39. Unless enjoined, Standard & Poor's will continue in the unlawful acts and practices described above.

40. The respondent's unlawful actions described above were, and are, intentional and willful, and/or have been, and are, implemented with callous and reckless disregard for the federally protected rights of NCRC, its constituent members, and the individuals and communities it serves.

V. CALL FOR RELIEF

41. NCRC calls on HUD to enter a declaratory judgment finding that the foregoing actions of respondent violate the FHAA; enter a permanent injunction directing Standard & Poor's to take all affirmative steps necessary to remedy the effect of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future; and award compensatory damages that would fully compensate NCRC for the frustration of mission and diversion of resources that have been caused by the conduct of respondent alleged herein and award a civil penalty against respondent.

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[1] Christopher Cox, (April 22, 2008) Testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

[2] Edward M. Gramlich, Subprime Mortgages: America's Latest Boom and Bust, Urban Institute, Washington D.C., c2007

[3] See n1 above.

[4] Jerome S. Fons, (October 22, 2008) Testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives

[5] Yuliya Demyanyk; Otto Van Hemert, (August 19, 2008) "Understanding the Subprime Mortgage Crisis". *Working Paper Series*. Social Science Electronic Publishing.; see also Indiana Laborers Pension Fund v. Fimalac, S.A., et al., No. O8-CV-5994, (S.D.N.Y.)

[6] Mark Pittman, (October 27, 2008) Evil Wall Street Exports Boomed With 'Fools' Born to Buy Debt, *Bloomberg News*

[7] Indiana Laborers Pension Fund v. Fimalac, S.A., et al., No. O8-CV-5994, (S.D.N.Y.)

[8] Henry Waxman, (October 22, 2008) Testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives

[9] Gretchen Morgenson, (October 22, 2008) Credit Rating Agency Heads Grilled by Lawmakers, *New York Times*

[10] Frank Raiter, (October 22, 2008) Testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives

[11] Paying for the American Dream, March 2008, A Joint Report By: California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition, Woodstock Institute

[12] See n12 above.

[13] Amaad Rivera, Brenda Cotto-Escalera, Anisha Desai, Jeannette Huezo, and Dedrick Muhammad (Institute for Policy Studies) Foreclosed: State of the Dream 2008 , United for a Fair Economy, January 2008, p. 10

[14] See n14 above.

[15] See n14 above.

[16] James Carr and Nandinee Kutty eds. , Segregation: The Rising Costs of America, New York c 2008

[17] See n17 above.

[18] See n11 above.

[19] RMBS Trends: U.S. RMBS Subprime Securitization Volume Declines Amid More-Stringent Guidelines, (August 31, 2007) Standard & Poor's Rating Services

[20] See n1 above.

[21] Office of Compliance Inspections and Examinations, Division of Trading and Markets and Office of Economic Analysis Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies, United States Securities and Exchange Commission, July 2008, p.12

[22] VickieTillman, (April 22, 2008) Testimony before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

[23] Robert B. Avery, K Brevoort, and G Canner (2006) The 2006 Home Mortgage Disclosure Act Study, US Federal Reserve

[24] See n31 above.

[25] See n14 above.

[26] See n14 above.

[27] Melvin L. Oliver, (September 9, 2008) Testimony at the National Commission on Fair Housing and Equal Opportunity.

[28] See n35 above.

[29] See n35 above.

[30] Josh Silver, (August 2008) Income is No Shield II, NCRC p. 1, citing Randall M. Scheessele, (April 2002) Black and White Disparities in Subprime Mortgage Refinance Lending, published by the Office of Policy Development and Research, the U.S. Department of Housing and Urban Development.